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August 29, 2004

2701 Eunice Street
Carlsbad, NM 88220

Mr. Steve Zappe
WIPP Hazardous Waste Facility Permit Writer
Somewhere on the South End of Santa Fe
Santa Fe, New Mexico

REF: "Tank Waste" Permit Modification Request

Dear Mr. Zappe:



The essence of the Waste Isolation Pilot Plant (WIPP) permit modification request (PMR) submitted by the Carlsbad Field Office (CBFO) of the Department of Energy (DOE) shortly after July 2, 2004 is in the following requested addition:

II.C.3.i. Tank waste - TRU mixed wastes from tanks that has ever been managed as high-level waste is not acceptable at WIPP unless specifically approved through a subsequent Class 3 permit modification. Such wastes are listed in Table II.C.3.i below.

Table II.C.3.i remains empty in the PMR, perhaps because any inclusions in the Table would make this PMR self-referential in a way that would like force it to pass through the more lengthy Class 3 modification process, and add the chance that the principle would be turned down because of the specific tank waste listed.

The proposed modification uses the phrase "...wastes from tanks that has ever been managed as high-level waste..." to define the wastes in question. At the March 2004 Albuquerque workshop on Hanford tank wastes one of the points made was that tank wastes initially classified as high-level waste (HLW) may not be able to be reclassified (Alan Conklin presentation). Approval of the phrase by the NMED would be implicit acceptance that the Hanford tank wastes were only managed as HLW, but are not necessarily HLW. This difference may not be an area that the NMED currently wishes to establish an implicit opinion on. The phrase also excludes tank wastes for which there is no record that the tanks were managed as HLW, but nevertheless should be considered HLW—and, as the NMED is aware, the DOE has been known to demonstrate such creativity in the past.

Thus, the NMED may want to consider whether including this proposed phrase into the WIPP Hazardous Waste Facility Permit (HWFP) would be legally and technically appropriate. It may be better to define what a "tank" is (perhaps by storage volume), and establish the same requirement for wastes that have been stored in any such "tank". There may be other ways to circumvent the possible difficulties of the phrase—or it may be that the phrase is the most satisfactory solution available.

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Another, perhaps more important, consideration is whether the PMR is necessary, or useful, at all. The principal additional danger to public safety and the environment from HLW over that of transuranic waste is the much higher dose rates due to the presence of fission products. This fact should make it clear that contact-handled (CH) wastes, even those that were previously classified as HLW (or "managed" as HLW), do not necessarily provide any more danger than the CH wastes that are already in the WIPP. The presentations at the March 2004 workshop on Hanford tank wastes indicate that the bulk of the Hanford waste, at least, will be CH wastes. If these wastes, or any other CH wastes, meet the Contact-Handled Waste Acceptance Criteria for the WIPP (CH-WAC; DOE/WIPP-02-3122, Rev 1) and the WIPP HWFP requirements there would seem to be no technical reason for additional controls to be established.

Other tank wastes will be remote-handled (RH) wastes. A non-HWFP agreement between the DOE and New Mexico has already been established to deal with WIPP's involvement of these short-term high radiation hazard wastes in the DOE complex. In the mid-1980s the Environmental Evaluation Group (EEG), then a division of the NMED, initiated an exchange of letters that eventually led to then-Governor Anaya's personal involvement, with the first amendment to the Consultation and Cooperation Agreement (C&C) between the DOE and the state of New Mexico being the result. This amendment established the limitations on remote-handled TRU (RH-TRU), most of which were later included in the federal WIPP Land Withdrawal Act. The C&C is a formal agreement agreed to by New Mexico at the highest level, and the DOE might be justified in stating that the actions by New Mexico that led to the perceived need for this PMR represent an abrogation of that previous agreement.

While the DOE might choose to send RH tank wastes from Hanford or SRS rather than the previously planned ORNL wastes, the limitations in the C&C would still appear to control the potential dangers involved in what should by now be well-accepted risks. On a technical level, there does not appear to be a compelling need for this PMR at all.

Sincerely,

Ben Alvin Walker